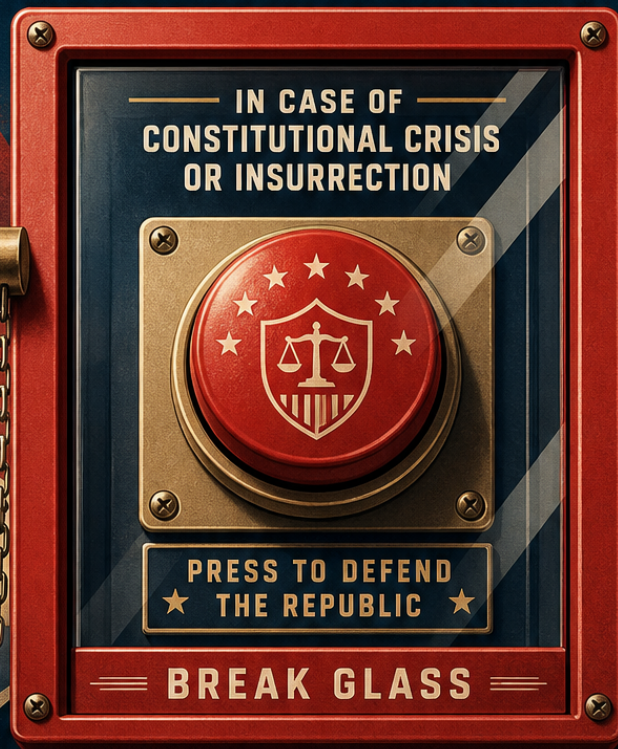


CONSTITUTIONAL RESET BUTTON

BREAK GLASS FOR DEMOCRATIC
SELF-DEFENSE AGAINST INSURRECTION.



A REPORT BY
THE COMMISSION ON DEMOCRATIC RESILIENCE

The Constitutional Reset: Section 3 of the Fourteenth Amendment, the Loyalty Oath Legacy, and the Architecture of Militant Democracy

The constitutional architecture of the United States contains a rarely utilized but foundational safety mechanism designed to protect the democratic republic from internal subversion. Section 3 of the Fourteenth Amendment, commonly known as the Disqualification Clause or the Insurrection Clause, represents a targeted constitutional response to the existential threat posed by public officials who, after taking an oath to support the Constitution, engage in conduct designed to dismantle it. Enacted in the shadow of the Civil War, this provision was not merely a temporary measure aimed at the leaders of the Confederacy but was intentionally designed as a permanent, prospective tool—a constitutional "emergency reset button".

This mechanism empowers the federal government to excise antidemocratic elements from public office, correcting a catastrophic structural defect in the original Constitution that allowed insurrectionist minorities to exploit the very protections of the system to shield their subversive activities. When analyzed through the lens of modern constitutional theory, Section 3 represents the ultimate expression of "militant democracy" (*streitbare Demokratie*)—the principle that a democratic state must possess the legal tools to defend itself from internal enemies who seek to subvert the constitutional order from within.

The Secession Winter and the Collapse of the Article I Congressional Toolkit

The necessity of a constitutional reset mechanism became apparent during the secession crisis of 1860–1861. Following the election of Abraham Lincoln on November 6, 1860, the southern states began executing ordinances of secession. During this period, southern senators and representatives withdrew from Congress, yet many refused to formally resign their seats. Instead, they vacated their legislative posts to coordinate with the newly formed Confederate government, maintaining their status as U.S. federal officeholders to monitor proceedings, draw federal salaries, and obstruct the remaining Unionist government.

A profound linguistic and semantic battle immediately emerged within the halls of Congress. Recognizing "withdrawal," as the Southern senators claimed they were doing, was viewed by Unionists as validating the legality of secession. Unionists insisted that the Union was perpetual, and therefore, senators who left had either "resigned" or had abandoned their posts, rendering their seats "vacant". This distinction was a crucial semantic battleground before open warfare

broke out at Fort Sumter.

The original constitutional toolkit was structurally inadequate to address this coordinated, internal rebellion. The primary mechanism for removing members of Congress was the Expulsion Clause of Article I, Section 5, which requires a two-thirds supermajority vote in each respective chamber. Because the Confederate-aligned faction held more than one-third of the seats, they could effectively block their own expulsion, paralyzing the legislative branch as the nation edged toward war.

To survive, the Senate of the 37th Congress was forced to innovate. On March 14, 1861, during a special session, the Senate passed a resolution declaring the seats of six departed southern colleagues "vacant" and authorizing the Secretary of the Senate to strike their names from the roll. This action was taken by a simple majority vote, establishing a vital precedent: declaring a seat vacant or identifying a lack of qualification was treated as an administrative, fact-finding determination rather than a punitive or criminal proceeding.

The tension of this period was highlighted by the case of Senator Louis T. Wigfall of Texas. In March 1861, Wigfall declared to the Senate that Texas had seceded, making him a "foreigner" who owed no allegiance to the United States, yet he refused to vacate his seat until he received official confirmation from his state. The Senate initially took no action on an expulsion resolution because Texas had seceded, illustrating the legal limbo of the era. However, after Confederate forces fired upon Fort Sumter on April 12, 1861, transition to open war destroyed any remaining leniency. On July 11, 1861, the Senate voted 32 to 10 to execute a wholesale expulsion of ten southern senators, including Wigfall and John Hemphill, for supporting the conspiracy against the Union.

Table 1: The 1861-1862 Congressional Purges and Semantic Frameworks

Date	Congressional Action	Target Individuals	Legal Threshold Applied	Constitutional Precedent
March 14, 1861	Declaration of Vacancy	Jefferson Davis, Judah P. Benjamin, Stephen Mallory, Albert Brown, Clement Clay, Robert Toombs	Simple Majority	Administrative qualification determination; avoids validating secession.
July 11, 1861	Wholesale Expulsion	James M. Mason, Robert M.T. Hunter, Thomas L. Clingman, Louis T. Wigfall, John Hemphill, and 5 others	Two-Thirds (32 to 10)	Punitive purge of active conspirators following the outbreak of hostilities.
<i>February 5, 1862</i>	Single-Member Expulsion	Jesse D. Bright (Indiana)	Two-Thirds (32 to 14)	Support for insurrection through political or

Date	Congressional Action	Target Individuals	Legal Threshold Applied	Constitutional Precedent
				material aid constitutes disloyalty.

The expulsion of Senator Jesse D. Bright of Indiana in February 1862 further illustrated that "engaging" in insurrection extended to high-level political coordination. Bright, a northern Democrat, had written a letter of introduction in March 1861 to Jefferson Davis on behalf of an arms merchant. Bright argued the letter was written pre-hostilities and was merely an act of polite protocol. The Senate rejected this defense, concluding that introducing an arms merchant to the leader of a rebellion was an act of disloyalty that violated his oath to defend the Constitution, establishing that active support did not require bearing arms on a battlefield.

The Ironclad Loyalty Test (12 Stat. 502) as a Structural Prototype

The political crisis of the Civil War demonstrated that traditional prospective oaths of office were insufficient to filter out disloyal actors. In response, Congress enacted the "Ironclad Test Oath" on July 2, 1862 (codified at 12 Stat. 502). The Ironclad Oath departed from the simple 14-word pledge of future allegiance established in 1789, requiring all federal civil, military, and naval officers to swear to both future loyalty and past fidelity.

The retroactive clauses of the Ironclad Oath required the declarant to swear they had "never voluntarily borne arms against the United States," provided material or moral support to the rebellion, or attempted to exercise any office under Confederate authority. This binary structure created a strict, self-executing mechanism of lustration. If an individual had committed any disloyal act in the past, they were legally incapable of taking the oath, thereby barring them from federal service without the need for a criminal trial or judicial conviction.

Initially, the oath exempted members of Congress, but in 1864, the Senate made the Ironclad Oath mandatory for all senators, a rule championed by Senator Charles Sumner. This mandatory application led to the immediate resignation of Senator James A. Bayard of Delaware in protest. The Ironclad Oath served as the direct conceptual precursor to Section 3 of the Fourteenth Amendment. By constitutionalizing this loyalty-based lustration, the framers of the Fourteenth Amendment sought to make the defensive screening of public officials a permanent feature of the American constitutional order.[1, 1]

Table 2: Evolution of Union Loyalty Oaths (1789–1884)

Date	Statute / Rule	Target Population	Core Retroactive / Prospective Demands	Legal & Constitutional Outcome
May 5, 1789	Oath Act (1 Stat. 23)	Members of Congress, federal	Simple prospective pledge of future	Established standard federal

Date	Statute / Rule	Target Population	Core Retroactive / Prospective Demands	Legal & Constitutional Outcome
		and state officers	allegiance to support the Constitution.	practice; remained unchanged for 72 years.
July 2, 1862	Ironclad Test Oath (12 Stat. 502)	All federal civil, military, and naval officers; attorneys	Absolute denial of past disloyalty; prospective commitment to support the Union.	Effectively barred former Confederates from federal service; sparked intense debate.
Senate Rule (1864)	Charles Sumner Mandate	All sitting and newly elected U.S. Senators	Mandatory subscription and signing of the 1862 Ironclad Oath.	Led to the protest resignation of Senator James Bayard.
July 11, 1868	Modified Oath (15 Stat. 85)	Individuals with congressional disability relief	Omitted the retroactive past-loyalty clauses; retained prospective commitment.	Allowed reconstructed southerners to take seats; Union members kept 1862 oath.
May 13, 1884	Oath Repeal Act (23 Stat. 21)	All federal officeholders and members of Congress	Unified prospective oath still used today (support and defend against all enemies).	Fully reintegrated the South; ended the post-Civil War era of lustration oaths.

The Supreme Court subsequently struck down the retroactive application of the oath to attorneys in *Ex parte Garland* (1867), holding that practicing before federal courts was a privilege that could not be restricted by ex post facto oaths. However, the political branches maintained the oath for elected and appointed officeholders. This demonstrated that while the judiciary resisted the expansion of lustration to private professions, the legislature retained the authority to establish rigorous loyalty qualifications for public office.

The Reconstruction Settlement and the Substantive Design of Section 3

The framing of the Fourteenth Amendment in 1866 and its ratification in 1868 represented a profound effort to reconstruct the constitutional order. Section 3 was specifically designed to address the "Slave Power"—the small elite of southern planter-politicians whom northern Republicans held responsible for engineered secession and rebellion. By targeting this specific group, the framers sought to ensure that those who had broken a sacred, pre-war oath of office could never return to power to subvert the reconstructed Union.

During the drafting and ratification debates, a critical legal question emerged: was Section 3 a punitive criminal sanction or an eligibility qualification? Reconstruction Republicans successfully established that Section 3 is a qualification for office, legally analogous to the age, citizenship, and residency requirements found in Articles I and II of the Constitution.

This classification insulated Section 3 from challenges under the Ban on Bills of Attainder and the Ex Post Facto Clause, as qualifications are prospective eligibility standards designed to protect the integrity of the state rather than retrospective punishments designed to penalize an individual. This distinction remains central to the clause's operation: because it is a qualification, it does not require a criminal conviction under statutes like 18 U.S.C. § 2383 to become active.

The Jurisprudential Bifurcation of Chief Justice Chase: *In re Davis vs. Griffin's Case*

The early judicial interpretation of Section 3 was characterized by a profound contradiction led by Chief Justice Salmon P. Chase. Chase's rulings on whether the clause was self-executing varied depending on the political and jurisdictional context of the litigation.

In *In re Davis* (1868), Chase presided as a circuit judge over the treason prosecution of former Confederate President Jefferson Davis. Davis's counsel argued that Section 3 was self-executing and that its disqualification from office served as the exclusive constitutional punishment for rebellion, thereby precluding further criminal prosecution for treason as a form of double punishment. Chase agreed, holding that Section 3 executed itself upon ratification and barred the federal government from prosecuting Davis for treason, which effectively protected the Confederate leader from a high-profile trial.

However, Chase completely reversed his position in *Griffin's Case* (1869). Caesar Griffin, a Black man convicted of assault in a Virginia state court, sought federal habeas corpus relief on the ground that the presiding state judge, Hugh W. Sheffey, was an ex-Confederate disqualified under Section 3. Chase ruled that Section 3 was *not* self-executing. He reasoned that immediately unseating all ex-Confederates in Virginia, which was then under provisional military rule, would paralyze the state government and invalidate thousands of official judicial and administrative acts.

Legal historians have noted that Chase's inconsistent rulings were driven by political and opportunistic motivations. In *Davis*, he utilized self-execution to shield the former Confederate president—a darling of the Southern Democrats whose support Chase sought for the 1868 Democratic presidential nomination. In *Griffin*, he denied self-execution to prevent a federal court from overriding a state-level prosecution of a Black defendant, protecting Southern state judiciaries from federal disruption. This historical context demonstrates that the non-self-executing doctrine of *Griffin's Case* was an ad hoc, politically motivated circuit opinion rather than a coherent statement of constitutional law.

***Trump v. Anderson* and the Separation of Dicta from**

Holding

The Ballot-Access Ruling

The Supreme Court's decision in *Trump v. Anderson* (2024) addressed the institutional locus of Section 3 enforcement. In a per curiam opinion, the Court unanimously reversed the Colorado Supreme Court's order disqualifying former President Donald Trump from the state's primary ballot. The narrow, binding holding of *Trump v. Anderson* is that states lack unilateral power under the Constitution to enforce Section 3 against federal officeholders or candidates.

The Court reasoned that allowing individual states to determine federal candidate eligibility would result in a chaotic, state-by-state "patchwork" of conflicting enforcement, disrupting the direct link between the national government and the electorate. Crucially, the Court acknowledged that states retain concurrent authority to enforce Section 3 against individuals holding or attempting to hold *state* offices.

Dicta vs. Binding Authority: The Section 5 Debate

While the outcome in *Trump v. Anderson* was unanimous, the five-justice majority went further, reasoning that Section 3 is not "self-executing" against federal candidates and can only be enforced against them through general legislation enacted by Congress pursuant to its Section 5 power. As the concurring justices noted, this broad pronouncement regarding Section 5 was non-binding *dicta* that went beyond the immediate question of state ballot-access authority.[1, 1, 38]

The majority's *dicta* collapsed the critical distinction between Section 3's *inherent* constitutional disqualification and Section 5's *delegated* legislative enforcement power. Section 3 is a self-contained, mandatory command ("No person shall hold...") containing its own internal remedy (the two-thirds vote to remove the bar). Under this framework, the power of Congress to recognize a disqualification is inherent in its role as the final arbiter of elections and member qualifications under Article I, Section 5, as well as its direct authority under Section 3.

By contrast, Section 5 is a general, delegated grant of legislative power to enact procedural frameworks. Conflating these two concepts implies that Section 3 is a nullity without Section 5 legislation, effectively giving a minority of Congress the power to block the lustration process by filibustering or refusing to pass implementing statutes—the very "suicide pact" the Reconstruction generation sought to avoid.

The Asymmetric "Constitutional Reset" Theory

The structural power of Section 3 lies in its asymmetric design, which inverts the default majority rules of the original Constitution to protect the republic against minority capture. Under established principles of constitutional interpretation, when the text of a granted power is silent on a decision rule, the default rule of a simple majority applies. This is known in constitutional scholarship as the "Any-Voting-Number Theory".

Because Section 3 is silent on the voting threshold required to declare the disability operative,

the default rule is a simple majority :

$V_{\{\text{disqualify}\}} = \text{Simple Majority}$

In contrast, the text is explicit regarding the threshold required to remove the disability, demanding a two-thirds supermajority of each House :

$V_{\{\text{remove}\}} = \frac{2}{3} \text{ of each House}$

This asymmetric relationship ensures that a simple majority of Congress can act quickly to protect the government's integrity. Once this simple-majority determination is made, it requires a two-thirds supermajority to restore eligibility. This prevents a minority faction aligned with an insurrection from blocking the lustration process, correcting the structural vulnerability that paralyzed the federal government in 1861.

The Boundary of Constitutional Remediations: Section 3 Disqualification vs. Impeachment

The constitutional reset of Section 3 is strictly limited to cases of collective, systemic threats to the constitutional order, such as insurrection, sedition, or rebellion.[1, 1] It is not a mechanism to address ordinary political misconduct, administrative overreach, or localized crimes, which are the proper domain of executive accountability, judicial review, or the Article II impeachment process.[1, 1]

Table 3: Comparative Analysis of Section 3 Disqualification and Article II Impeachment

Characteristic	Section 3 Disqualification	Article II Impeachment
Constitutional Purpose	Preventative lustration to protect the state from disloyal oath-breakers.[1, 1]	Punitive/political removal of corrupt or abusive officers.
Substantive Grounds	Limited strictly to "insurrection" or "rebellion" against the United States.	Broadly encompasses "Treason, Bribery, or other high Crimes and Misdemeanors".
Procedural Nature	Automatic status-based eligibility bar; operates on constitutional fact-finding.[1, 1]	Political-judicial trial requiring formal indictment and trial in the Senate.
Voting Thresholds	Simple majority to declare; two-thirds supermajority to remove the bar.	Simple majority to impeach (House); two-thirds supermajority to convict (Senate).
Primary Sanction	Direct, permanent disqualification from holding any state or federal office.[1, 1]	Immediate removal from current office; disqualification is secondary and optional.

Sociological Backlash and the Resurgence of Lustration Debates

The resurgence of the Section 3 debate is framed not merely as a technical legal dispute, but as a reaction to systemic demographic and political shifts. The election of Barack Obama, combined with census projections indicating a transition toward a majority-minority nation, catalyzed a profound backlash, often described as "whitelash". This backlash has manifested in anti-democratic, anti-pluralist movements that seek to preserve a racial hierarchy. Legal scholars argue that this contemporary "insurgency" mirrors the antebellum and Reconstruction-era dynamics of the "Slave Power", which sought to weaponize constitutional processes to preserve its minority status. This explains why lustration tools like Section 3 have returned to the center of public law discourse.

The Lustration and Amnesty Chronology (1868–1898)

Rather than a single, immediate repeal, the lustration process established by Section 3 evolved through a series of legislative and administrative phases during the late 19th century. When the Fourteenth Amendment was ratified in July 1868, Section 3 immediately attached a status-based disability to an estimated 150,000 former Confederates who had violated their pre-war oaths of allegiance.

Between 1868 and 1872, the primary mechanism for restoring eligibility was the passage of individual, private amnesty bills. Ex-Confederates had to formally petition Congress, which voted on a case-by-case basis to remove the political disability, requiring a two-thirds vote of each House.

By 1871, growing political pressure for national reconciliation led President Ulysses S. Grant to advocate for a general amnesty. This culminated in the **Amnesty Act of 1872** (passed on May 22, 1872, as H.R. 2761, 17 Stat. 142). Enacted by a two-thirds vote in both chambers, the 1872 Act broadly removed the office-holding disqualifications from the vast majority of former Confederates, clearing approximately 150,000 former troops and low-level officials.

However, the Amnesty Act of 1872 did not enact a universal repeal. To preserve the protective core of the constitutional reset, Congress carved out explicit exceptions from the general amnesty, ensuring that the high-level leaders of the rebellion remained permanently disqualified.

Table 4: The Post-Civil War Lustration and Restoration Chronology (1868–1898)

Period	Statutory / Constitutional Event	Primary Target Class	Political & Eligibility Outcome
July 1868	Ratification of the Fourteenth Amendment	All former federal and state officers who joined the Confederacy.	Immediate attachment of status-based disability; disqualified an estimated 150,000

Period	Statutory / Constitutional Event	Primary Target Class	Political & Eligibility Outcome
			individuals.
1868–1872	Individual Private Acts of Congress	Named petitioners seeking eligibility restoration.	Restored eligibility in individual cases by a two-thirds vote of each House.
May 22, 1872	General Amnesty Act (17 Stat. 142)	Bulk of Confederate troops and low-level civil servants.	Broadly removed political disabilities; cleared over 150,000 former Confederates.
1872–1898	Statutory Exclusions	High-level Confederate military, judicial, and executive officers.	Maintained strict disqualification for several hundred top leaders, including Jefferson Davis.
June 6, 1898	Universal Amnesty Act (30 Stat. 432)	All remaining Civil War-era disqualified individuals.	Complete and final removal of all remaining Civil War-era Section 3 disabilities.

The backward-looking nature of the 1872 and 1898 Amnesty Acts was subsequently confirmed by the federal judiciary. As the United States Court of Appeals for the Fourth Circuit ruled in *Cawthorn v. Amalfi* (2022), the Amnesty Act of 1872 only removed the eligibility bar for those whose constitutionally wrongful acts occurred *prior* to its enactment. The statutory text, written in the past tense ("disabilities imposed... are hereby removed"), has no prospective application to future insurrections. Consequently, Section 3 remains a live, prospective safeguard within the constitutional architecture, fully applicable to any modern official who violates their oath of office by engaging in insurrection.

Conclusion: The Endurance of the Reset Button

Section 3 of the Fourteenth Amendment stands as a vital component of the American constitutional order. It represents the realization by the Reconstruction generation that the original Constitution's protections for political minorities could be weaponized by those seeking to destroy the Union from within. By creating an "emergency reset button" that allows a simple majority of Congress to disqualify oath-breakers, the Amendment corrected the structural supermajority trap that nearly paralyzed the federal government during the secession winter of 1860–1861.

This mechanism is not a political weapon to resolve policy disputes, nor is it a substitute for the individualized process of impeachment.[1, 1] Rather, it is a defensive tool of militant democracy designed to protect the constitutional order. By placing the ultimate power to enforce this qualification in the hands of Congress, the Constitution ensures that the defense of the republic is entrusted to the branch of government most representative of the nation. Section 3 remains a

permanent safeguard, ready to be deployed by a resolute congressional majority to ensure that the transition of power in the United States remains a matter of ballots, not bullets.

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